(ORDER LIST: 15 U.S.)

SATURDAY, JULY 1, 2023

REVIEW DENIED

15-01 CENTER FOR CONSTITUTIONAL RIGHTS V. UNITED STATES

The petition for a writ of review is denied.

SUPREME COURT OF THE UNITED STATES

No. 15–01

CENTER FOR CONSTITUTIONAL RIGHTS *v.* UNITED STATES

ON WRIT OF REVIEW

[July 1, 2023]

The petition for a writ of review is denied.

Statement of CHIEF JUSTICE BUTLER, with whom JUSTICE STEVENS joins, respecting the denial of review.

I respect the Court's decision to not grant review in this case. In any petition for Anytime Review, the petitioner must—as always—have standing, as we have held on numerous occassions.[1] Petitioners in this case, though, do not

[1] To be fair, I do disagree with our holdings that standing must be present in Anytime Review cases. Standing is a matter for "Cases" or "Controversies." This power of ours should not extend to that. Because this is ROBLOX—a gaming platform, which has affected our jurisprudence in other areas of law—, we should be mindful of the fact that there are circumstances or occasions when really complicated legal issues may arise. Therefore, the Supreme Court—a body of top-notch, quality legal minds—need to be easily accessible to parse those issues to make the most sense of those potential issues. To require standing, it places a burden on petitioners who are seeking an answer to a legal question. Indeed, there is case after case that indicates that the Supreme Court should not provide advisory opinions. However, that principle is an ethical conclusion of the "Cases" or "Controversies" Clause—not a legal result of the Anytime Review Clause, which we have equated to be a fellow member of "Cases" or "Controversies." Essentially, our requirement of standing in Anytime Review cases alters the Constitution from "Cases," "Controversies" to make room for also "Anytime Review." Because the first two—cases and controversies—are of their own jurisprudence by our Court's holdings—the legal conclusions that the Court has made regarding cases and controversies should only extend to cases that come before us through *certiorari*, mandamus, and so forth—not Anytime Review.

have standing. An individual's standing versus an organization's standing are two, different sets of criteria. "Standing doctrine asks if a petitioner (1) has suffered an injury in fact, (2) if the injury in fact is fairly traceable to the challenged conduct, and (3) if a favorable judgment would likely redress the injury." See *Tools* v. *United States*, 9 U. S. 113 (2020) (Bork, J., dissenting) (quoting *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992)). This is the criteria for an individual's standing. "And because we conclude that Brown and Taylor lack standing, this case begins and ends with standing." *Department of Education* v. *Brown*, 600 U. S. ___ (2023) (quoting *Carney* v. *Adams*, 592 U.S. ___, ___ (2020) (slip op., at 4) (internal quotation marks omitted). Admittedly, I am of the opinion that Justice Bork holds, *ibid*, — our application of standing ought not to apply to our Anytime Review authority. However, this is not the case that would serve as the vessel to combat our previous holdings.

Organizational standing "[i]n cases like these, where the plaintiff is an organization, the standing requirements of Article III can be satisfied in two ways." See *Students for Fair Admissions*, *Inc.* v. *President and Fellows of Harvard College*, 600 U. S. ___ (2023). First, "[e]ither the organization can claim that it suffered an injury in its own right," *ibid*, or "it can assert standing solely as the representative of its members." *Ibid*. (quoting *Warth* v. *Seldin*, 422 U. S. 490, 511 (1975) (internal quotation marks omitted). The latter approach is the representational or organizational standing concept. *Ibid*.; *Summers* v. *Earth Island Institute*, 555 U. S. 497–498 (2009). For this to work, an organization must demonstrate that "(a) its members would otherwise have standing in their own right; (b) the interest it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Ibid*. (quoting *Hunt* v. *Washington State Apple Advertising*

Comm'n, 432 U. S. 333, 343 (1977)).

Petitioner does not share any insight on any of these three prerequisites. Therefore, we are unable to determine whether standing is exhibited upon receiving the petition. I was, for a moment, prepared to grant review and allow the parties to brief on the matter of standing. Though, I was deterred from doing so following my review of the legal arguments presented.

Petitioner asks the Court to answer whether the Attorney General of the United States holds the authority to "render the National Security Division [of the Department of Justice] defunct and restrict its operations without the consent or mandate of Congress," see Petition for Anytime Review. Section 509A(a), Title 28 of the United States Code clearly states that "[t]here is a National Security Division of the Department of Justice." *Ibid*. This is Congress instructing the Department of Justice to build space to accommodate for this division.

Petitioner does all of the legal legwork required, and, therefore, our actions, as a Court, are not necessary in this matter.

Breaking down the petitioner's arguments, he is accusing the Attorney General of unlawfully making the National Security Division defunct. Instead, the Attorney General merged it with the Criminal Division. We do not dispute the petitioner's claim of the Necessary and Proper Clause, see Art. I, sec. 8 of the United States Constitution. Congress is the one responsible for the creation of laws that are Necessary and Proper—not the Executive. It is the role of the Executive to *execute* the laws. See Art. II, sec. 3, cl. 5 of the United States Constitution. The only place where the petitioners err in their analysis is at the very end. The National Security Division is not gone, entirely. It is just housed in Criminal Division.